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November 13, 2017

SCOTT WING
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Honorable William H. Pauley
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 1007

Re: ***Joanne Hart and Amanda Parke v. BHH, LLC d/b/a Bell
+ Howell and Van Hauser LLC***
Case No.: 1:15-cv-04804

Dear Judge Pauley:

We represent BHH, LLC, d/b/a Bell + Howell and Van Hauser, LLC (collectively, “Defendants”) in the captioned case, and respectfully submit this letter requesting that the Court schedule a pre-motion conference, pursuant to I(D) and III(A)(i) of your Individual Practices, in regard to Defendants anticipated Motion for Extension of Time to Exchange Rebuttal Reports. Defendants request that the Court extend the deadline to exchange rebuttal reports from November 21, 2017 to December 22, 2017. Defendants also request a corresponding extension of the close of expert discovery from December 22, 2017 to January 21, 2017 as reflected in the attached, proposed Revised Scheduling Order. The basis for Defendants’ anticipated motion is set forth as follows.

Defendants wish to extend the deadline 1) in order to receive and review responses to subpoenas that have been issued to U.S. Department of Agriculture, Sierra Research Laboratories, Inc., i2L Research USA, Inc., and RMC Pest Management Consulting pursuant to Federal Rule of Civil Procedure 45(c), (d), (e) and (g); and 2) in order to evaluate the need for, retain, and obtain an expert report from a rebuttal economist expert.

Defendants received Plaintiffs’ expert report of Dr. Michael F. Potter on October 31, 2017. Dr. Potter’s report identifies and relies on efficacy tests commissioned by Plaintiffs and developed by U.S. Department of Agriculture, Sierra Research Laboratories, Inc., i2L Research USA, Inc., and RMC Pest Management Consulting (“independent testing entities”). Defendants have issued subpoenas to the independent testing entities on November 10, 2017 requesting production of documents provided to the independent testing entities and generated from any of the efficacy tests.

To provide a reasonable time with which to produce the requested production, the independent testing entities have been asked to produce the requested documents within 7 days

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from service of the subpoenas, or by November 17. Even if the independent testing entities comply with the requested response time, Defendants will be left with only 4 days to review and respond to the requested production prior to the current deadline. It is more likely that the independent testing entities will request additional time to respond to the subpoenas.

An extension of time in the instant case would also be appropriate, for example, to allow Defendants to file a rebuttal expert economist report. Defendants received the report of Plaintiffs' expert economist Colin B. Weir on October 31, 2017. Defendants request additional time to evaluate the need for a rebuttal economist expert, and if determined necessary, time to retain a rebuttal expert and provide said expert sufficient time with which to produce a rebuttal report.

The Parties to the above action jointly moved to extend fact discovery, which was granted and so ordered by the Court on September 26, 2016. No prior requests for expert discovery deadline extensions have been made. Plaintiffs' counsel has not consented to the requested extension on the basis that modifications to the existing deadlines are not proper. To date, expert discovery has consisted of exchange of expert disclosures and we anticipate future expert discovery will include exchange of rebuttal reports and taking of expert depositions. While an extension of the deadline to file rebuttal reports will impact the scheduled completion of expert discovery, given the time between the scheduled completion of expert discovery and the scheduled pre-trial conference on February 9, 2018, we do not anticipate any additional impacts to the current scheduling order.

For these reasons, Defendants ask that the Court schedule a pre-motion conference concerning Defendants' anticipated Motion to Extend the Time to Exchange Rebuttal Reports.

Very truly yours,

LEAHY, EISENBERG & FRAENKEL, LTD.

/s/ *Scott Wing*

By: Scott Wing

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Application granted. The deadline to exchange rebuttal reports is extended to December 22, 2017. Expert discovery shall be completed by January 21, 2018. A joint pretrial order shall be submitted by February 2, 2018. A final pretrial conference shall be held on February 9, 2018 at 11:00 a.m.

SO ORDERED:

Dated: November 16, 2017

New York, New York


WILLIAM H. PAULEY III
U.S.D.J.